

REMARKS

Claims 1, 3, 5 – 7, 20 – 23, 26 and 27 were presented for examination in the present application and remain pending upon entry of this Amendment. For at least the reasons set forth below, Applicants respectfully submit that claims 1, 3, 5 – 7, 20 – 23, 26 and 27 are patentable over the cited art.

In the Response to Arguments section, the Office Action contends that the specification of the present application provides support for as little as 0.01 grams, but does not provide support for the upper limit of 0.5 grams as recited in claim 6. This contention is respectfully traversed. Applicants respectfully submit that the upper limited recited in claim 6 is 0.05 grams, not 0.5 grams, as alleged in the Office Action. Accordingly, Figure 2 and page 18, line 3 to page 19, line 2 of the specification clearly provide support for the recited range.

The Office Action also contends that differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. The Office Action further provides that one having ordinary skill in the art would be able to determine the amount of additive necessary for achieving optimal odor removal through routine experimentation. This contention is respectfully traversed.

The court in *In re Antonie* shed light on which variables may be subject to “routine experimentation”. Specifically, the court held that “[a] particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation”. See, *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). In addition, the Examiner has the burden of asserting that the prior art demonstrates that the variable achieves a “recognized result”.

Applicants respectfully submit that the Office Action failed to take into consideration the holding in *In re Antonie* when rejecting claims 1, 3, 5 – 7, 20 – 23, 26 and 27 over U.S. Patent No. 5,417,224 to Petrus (hereinafter “Petrus”).

Specifically, the Office Action does not assert, nor does Petrus demonstrate, that limiting the total amounts of glycerin by weight achieves the recognized result of controlling and suppressing odor. Contrary to what is stated in the Office Action, the optimization of the amount of glycerin to the ranges recited in claims 1, 5, 6, 20 and 27 to control and suppress odor were unexpected results that go beyond routine experimentation. Furthermore, it is improper to consider the amount of the glycerin to be a result-effective variable simply because it is known that varying the amount of glycerin applied to an article provides enhanced lubrication, as provided in Petrus. Accordingly, the Office Action’s conclusion that one of ordinary skill in the art at the time of the invention would have been motivated to find the optimum or workable ranges so as to determine the ranges recited by claims 1, 5, 6, 20 and 27 is erroneous.

Claims 1, 3, 5 – 7, 20 – 23, 26 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Petrus. For at least the reasons set forth below, Applicants submit that claims 1, 3, 5 – 7, 20 – 23, 26 and 27 are not disclosed or suggested by Petrus.

Independent claim 1 recites, among other features, a fibrous tampon having at least one inner layer with one or more malodor counteractant materials incorporated therein and at least one outer layer that provides a cross-pad configuration to the fibrous tampon. The one or more counteractant materials are present between about 0.01 grams to about 0.12 grams.

The Office Action fails to establish a *prima facie* case of obviousness for independent claim 1 for at least three reasons.

First, as discussed above, Applicants respectfully submit that the Office Action has not satisfied the burden of asserting that the prior art demonstrates the amount of malodor counteractant achieves the recognized result of controlling and suppressing odor. Contrary to what is stated in the Office Action, the optimization of the amount of malodor counteractant to control and suppress odor is not a result-effective variable simply because it is known that varying the amount of malodor counteractant applied to a fibrous article provides lubrication. Accordingly, since the cited art does not recognize that varying the amount of malodor counteractant achieves the result of controlling and suppressing odor, Applicants respectfully submit that the Office Action has mischaracterized the amount of malodor counteractant as a result-effective variable.

Second, Petrus fails to disclose or suggest a fibrous tampon, as recited in claim 1. The Office Action contends that it would have been an obvious matter of design choice to use a fibrous tampon instead of a foam tampon, since Applicants have not disclosed that using a fibrous tampon solves any stated problem or is for any particular purpose. The Office Action further contends that the invention would perform equally well with a foam tampon. These contentions are respectfully traversed. Page 4, line 23 through page 5, line 6 of the present application provides that a fibrous absorbent article can be fabricated in such a way to capitalize on the malodor counteractant material's capability of absorbing odiferous organic molecules associated with menstrual fluids to lower the vapor pressure and, therefore, lower the threshold of the odiferous materials. These advantages could not be achieved with a foam tampon because the multi-layer, cross pad configuration is important in achieving the necessary absorption and lower vapor pressure.

Third, Petrus fails to disclose or suggest a tampon having at least one inner layer with one or more malodor counteractant materials incorporated

therein and at least one outer layer that provides a cross-pad configuration. In contrast, Petrus has an inner region and an outer region fabricated from foam.

Accordingly, for at least the aforementioned reasons, independent claim 1, as well as claims 3 and 5 that depend therefrom, are in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3 and 5.

Independent claim 6 recites, among other features, a fibrous tampon having at least one inner layer with liquid glycerin incorporated therein and at least one outer layer that provides a cross-pad configuration. The liquid glycerin is present between about 0.01 grams to about 0.05 grams.

The Office Action fails to establish a *prima facie* case of obviousness for independent claim 6 for at least the same reasons discussed above regarding independent claim 1. In particular, Applicants respectfully submit that the Office Action has not satisfied the burden of asserting that the prior art demonstrates the amount of glycerin achieves the recognized result of controlling and suppressing odor; Petrus fails to disclose or suggest a fibrous tampon; and Petrus fails to disclose or suggest a tampon having at least one inner layer with glycerin incorporated therein and at least one outer layer that provides a cross-pad configuration. Accordingly, for at least the aforementioned reasons, independent claim 6, as well as claim 7 that depends therefrom, are in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 6 and 7.

Independent claim 20 recites, among other features, a fibrous tampon having at least one inner layer and at least one outer layer. Liquid glycerin is disposed continuously along a longitudinal extant of the inner layer to absorb odors. The liquid glycerin is present between about 0.01 grams to about 0.12 grams.

The Office Action fails to establish a *prima facie* case of obviousness for independent claim 20 for at least the same reasons discussed above regarding claims 1 and 6. In particular, Applicants respectfully submit that the Office Action has not satisfied the burden of asserting that the prior art demonstrates the amount of liquid glycerin achieves the recognized result of controlling and suppressing odor; Petrus fails to disclose or suggest a fibrous tampon; and Petrus fails to disclose or suggest a tampon having at least one inner layer with liquid glycerin disposed continuously along a longitudinal extent of the inner layer. Accordingly, for at least the aforementioned reasons, independent claim 20, as well as claims 21 – 23 that depend therefrom, are in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 20 – 24.

Independent claim 26 recites, among other features, a method of deodorizing a vaginal area by applying a multi-layered fibrous absorbent article having a malodor counteractant to the vaginal area. The malodor counteractant comprises glycerin and at least one additional malodor counteractant, and is incorporated between an inner layer and an outer layer of the fibrous absorbent article.

The Office Action fails to establish a *prima facie* case of obviousness for independent claim 26 for at least the same reasons discussed above regarding claims 1, 6 and 20. In particular, Applicants respectfully submit that Petrus fails to disclose or suggest a fibrous tampon; and Petrus fails to disclose or suggest a method of deodorizing a vaginal area by applying a multi-layered fibrous absorbent article having a malodor counteractant to the vaginal area, where the malodor counteractant comprises glycerin and at least one additional malodor counteractant and is incorporated between an inner layer and an outer layer of the fibrous absorbent article. Accordingly, for at least the aforementioned reasons, independent claim 26 is in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 26.

Independent claim 27 recites, among other features, a method of deodorizing a vaginal area by applying a fibrous absorbent article having a fibrous material and a liquid glycerin disposed in the fibrous material to the vaginal area. The liquid glycerin is present in an amount between about 0.01 grams and 0.05 grams. The fibrous absorbent article has at least one inner layer and at least one outer layer. The liquid glycerin is disposed on the fibrous absorbent article.

The Office Action fails to establish a *prima facie* case of obviousness for independent claim 27 for at least the same reasons discussed above regarding claims 1, 6, 20 and 26. In particular, Applicants respectfully submit that the Office Action has not satisfied the burden of asserting that the prior art demonstrates the amount of glycerin achieves the recognized result of controlling and suppressing odor; Petrus fails to disclose or suggest a fibrous absorbent article; and Petrus fails to disclose or suggest a tampon having at least one inner layer and at least one outer layer with liquid glycerin disposed on the fibrous absorbent article. Accordingly, for at least the aforementioned reasons, independent claim 27 is in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 27.

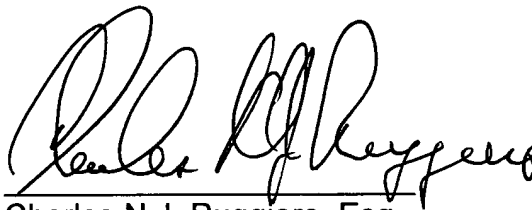
Last, Applicants note that the Office Action does not specifically rejected claims 3, 5 – 7, 21 – 23 and 27. Although the Summary of the Office Action indicates that claims 3, 5 – 7, 21 – 23 and 27 stand rejected, the Detailed Action omits any explanation of how the cited art renders these claims obvious. Applicants respectfully submit that this omission amounts to a failure to articulate a *prima facie* case of unpatentability and the burden to rebut this “rejection” has not yet shifted to the Applicant. Consequently, a next Office Action rejecting claims 3, 5 – 7, 21 – 23 and 27 cannot properly be made final since only then would the Applicants be obligated to rebut the rejection, presuming that such an Office Action sets forth a *prima facie* case. See MPEP §706.07(a).

In view of the foregoing, Applicants submit that all claims present in this application patentably distinguish over each reference and the cited combination of references. Accordingly, Applicants respectfully request that this application be passed to allowance.

If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the undersigned at the telephone number below.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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